
Overview of key amendments to tax legislation in 2017

April 2017

In brief

Further to our seminars and webinars, in this issue of our alert we summarize significant amendments to the tax legislation, which come into force in 2017.

Unless otherwise stated, the amendments are effective since 1 January 2017.

In detail

General provisions

Definition of market exchange rate

The new wording of the Tax Code defines market exchange rate as rate of KZT to foreign currency established in accordance with the requirements of the National Bank jointly with the authorized state body, which regulates activities in the area of accounting and financial reporting.

Previous wording of the Tax Code referred to a market exchange rate as weighted average exchange rate of KZT to a foreign currency established at the main session of KASE in accordance with the rules of the National Bank. This wording caused confusion resulting in questions around using the (1) rate established at the morning KASE trading session, or (2) rate published at the official web-site of the National Bank.

The Rules on determination and application of the market exchange rate envisage that the market exchange rate should be applied on the business day following the day of a trading session. In other words, current exchange rate published by the National Bank is the rate established at the trading session of the previous day.

Thus, introduced amendments are of clarification nature.

These clarifications are reflected throughout the text of the Tax Code (e.g. for the purpose of

conversion of VATable turnover and income of non-residents in a foreign currency to the national currency).

Articles 12.1.10, 180.2, 195.1, 201.1, 216.3, 238.19, 241.3, 276-1.1, 314.2, 320, 328.2, 589.6 of the Tax Code

Rules of tax treatment of exchange rate difference

Based on the clarifying amendment, tax treatment of FOREX should fully correspond to International Financial Reporting Standards ("IFRS") and requirements of the Kazakhstan legislation on accounting and financial reporting.

Article 57.4 of the Tax Code

Taxpayer responsibilities

A new requirement is introduced for legal entities and / or their subdivisions to provide the tax authorities with information and data on receipt of cash and / or other property from foreign sources in accordance with rules, forms and deadlines developed by the Ministry of Finance.

Failure to provide the required information and / or provision of false information could result in significant fines.

Article 14.1-1 of the Tax Code

Tax authorities' rights

Under the framework of international tax cooperation and global standard on exchange of

tax information of the Organization of Economic Co-operation and Development, the Tax Code now reflects the tax authorities' right to exchange information, including commercial and banking data, with the authorised bodies of foreign states.

Article 19.1.3-2 of the Tax Code

Personal income tax ("PIT") and social tax ("ST")

PIT and ST returns

A new combined PIT and ST return for residents, non-residents and individuals without citizenships will be applied as of July 2017.

In addition, the list of taxpayers obliged to submit the above combined tax return was extended to entities obliged to assess, withhold, remit and pay compulsory medical social insurance contributions.

Article 67.1.1 of the Tax Code

PIT exemptions

The list of PIT exemptions was extended to insurance payments made under annuity insurance contracts concluded by the employer in terms of compensation for the damage to the life / health of the employee in connection with performance of their working duties.

Article 155.3.12 of the Tax Code

Obligation of filing of PIT declarations

Kazakhstan tax resident individuals owning the following property are now required to submit PIT declarations starting 1 January 2017:

- immovable property subject to the state or other registration in the authorised body of the foreign state;
- securities of issuers registered outside of Kazakhstan;
- participatory interest in legal entities registered outside of Kazakhstan.

Article 185.1.6 of the Tax Code

Corporate income tax ("CIT")

Aggregate annual income ("AAI") for CIT purposes

Fines and penalties written-off in accordance with the Kazakhstan tax legislation should not be included into annual aggregate income.

Article 84.2.4-1 of the Tax Code

Effective from 1 January 2015

Income from reduction of provisions (reserves)

Bad debt provisions (reserves) previously claimed for CIT deduction should not be recognised as taxable income in case of decrease of the claim against the debtor, if such claim reduction is a result of bad debt forgiveness on loans and related interest. The deduction is limited by maximum ratio of (i) total bad debt on loans and related interest forgiven during a tax period to (ii) principals on loans and related interest as of the beginning of the tax period. Maximum ratio is equal to the coefficient of 0,1.

Article 90.2.9 of the Tax Code

Effective from 1 January 2016

CIT deductions

The new edition was supplemented by a list of deductible expenses. Thus, contributions to the social medical insurance fund in accordance with the legislation on obligatory social medical insurance are deductible:

- in the tax reporting period – within the amount accrued for the tax reporting period and / or for the previous tax periods;
- in tax periods preceding the tax reporting period – within the amount accrued for the tax reporting period.

Article 100.14-2 of the Tax Code

Effective from 1 July 2017

Taxation of non-commercial organisations

Income of non-commercial organisations in the form of the excess of FOREX gain over FOREX loss on bank deposits (including interest on it) should not be subject to CIT.

Article 134.2 of the Tax Code

Effective for the period from 1 January 2014 to 1 April 2017

Financial leasing incentives

The right of taxpayers to reduce taxable income for finance lease interest was preserved. Earlier, it was considered to limit the current incentive (except for agricultural enterprises).

Article 133.2 of the Tax Code

International taxation

Documents confirming residency

The procedure of tax residency confirmation was simplified i.e. incorporation of provisions specifying that the document confirming tax residency should not be subject to verification by

the competent authority of a foreign state, diplomatic or council legalisation, if such document is provided in a hard copy of an electronic document published on the website of the competent body of the foreign state.

Points 4 and 5 of Article 219 of the Tax Code

Other documents

If no charter documents are available or a non-resident is not required to register with the official trade register (register of shareholders or any other similar document) in its country of incorporation, such non-resident should provide the tax agent with any other document (act) of the foreign state, which constitutes the grounds for establishment of such non-resident.

Article 219.1.2 of the Tax Code

Value added tax ("VAT")

Date of VATable turnover

To simplify determination of VATable turnover date, certain special provisions were excluded, namely on:

- provision of property into temporary ownership / use if act of acceptance for a certain month is not signed before the month end, but where payment for such month was made;
- cases where primary documentation is not available during a calendar year.

Points 2-3 and 8 of Article 237 of the Tax Code

Payment via POS

It is no longer required to issue tax invoices if payments for goods, work and services are made via POS.

Article 263.15.7 of the Tax Code

Adjustment of taxable turnover

Adjustment of taxable turnover could be done based on a cash cheque. No additional tax invoice is required. This amendment applies to retail chains and organizations, which were previously not required to issue tax invoices.

Article 239.3.2 of the Tax Code

VAT exempt turnover

Borrowing transactions in monetary form, which are regarded as supplied in Kazakhstan are exempt from VAT (this applies to regular loans provided for a fee, with specific term and repayment). Previously, this exemption was applicable for national managing holdings and their subsidiaries only.

Article 248.20 of the Tax Code

VAT offset

Input VAT on goods, work and services should be taken for offset in the tax period, to which the latest of the following dates relates:

- date when goods, work and services are received;
- date of the tax invoice.

Article 256.3 of the Tax Code

Payment of VAT by offset method

VAT cannot be paid by offset method if imported goods are subsequently used for international financial leasing.

Article 250.2 of the Law No. 100-IV dated 10 December 2008

E-invoices

The following deadlines for gradual transition to mandatory e-invoicing are established:

Since 1 January 2017:

- authorized economic operators, customs representatives, customs carriers, owners of temporary storage warehouses, owners of customs warehouses;
- taxpayers involved in trading of goods, for which reduced rates of import customs duties could be applied due to Kazakhstan's accession to WTO;

As from 1 January 2018:

- large taxpayers subject to monitoring.

As from 1 January 2019:

- all other taxpayers.

Article 263.2 of the Tax Code

Invoicing on export operations

Under the export customs procedure tax invoices should now be issued within the following deadlines:

- in paper format – not later than 7 calendar days following the date of VATable turnover;
- in electronic format – not later than 20 calendar days following the date of VATable turnover.

Previously, tax invoices under the export custom procedure should have been issued:

- in paper format – not later than the date of VATable turnover;
- in electronic format – not later than 7 calendar days following the date of VATable turnover.

Article 263.7-2 of the Tax Code

Taxation of international railway-ferry
In order to stimulate international transportation of cargos through seaports in international railway-ferry, provisions allowing recognition of unified sample delivery note as an international transportation document (for application of 0% VAT) were introduced.

Article 244.3.1 of the Tax Code

Voluntary VAT registration

The list of documents for voluntary VAT registration was amended. Taxpayers have a right not to submit copies of documents evidencing reaching the minimum VATable turnover limit (i.e. acts of acceptance).

The tax authorities may reject the application for voluntary VAT registration if a taxpayer stopped the submission of tax returns or if the taxpayer was recognized as inactive.

Points 1 and 3-1 of Article 569 of the Tax Code

Effective since 1 January 2015

VAT deregistration

The tax authorities were granted a right to conduct VAT deregistration without notification of a taxpayer based on a court decision invalidating re-registration of a legal entity.

Provisions on VAT deregistration due to non-indication of information on VATable turnover, purchases of goods, works and services in VAT returns in two consecutive tax periods was excluded.

Article 571.4.5-1 of the Tax Code

VAT registration

Provision regarding a sharp reduction of minimum turnover threshold (from 30,000 MCI to 3,234 MCI) for mandatory VAT registration purposes was suspended.

The following gradual reduction is established:

- 1 January 2017 to 1 January 2018 - 30,000 MCI (as in 2016);
- 1 January 2018 to 1 January 2019 – 25,000 MCI;
- 1 January 2019 to 1 January 2020 – 20,000 MCI.

Article 568.5 of the Tax Code

Excise duties

Notification on imminent receipt of excisable goods

Due to the introduction of accompanying notes, the requirement on notification of the tax

authorities on imminent receipt of excisable goods imported from the Customs Union was excluded.

Article 14.1.7 of the Tax Code

List of excisable goods

Liquids containing nicotine for e-cigarettes are equivalent to excisable goods (previously all liquids for e-cigarettes were considered to be excisable).

Article 279.4-1 of the Tax Code

Excise rates

Excise rates on alcohol and tobacco are planned to be gradually increased to harmonise Kazakhstan excise duties rates with excise rates of trading partners.

The following excise rates are implemented between 2 January 2017 and 1 January 2018:

Types of excisable goods:

- Alcoholic beverages (except for cognac, brandy, wines, wine materials, beer and beer beverages)
Old: KZT 1,380 / litre of 100% alcohol;
New: KZT 2,000 / litre of 100% alcohol;
- Beer and beer beverages
Old: KZT 26 / litre;
New: KZT 39 / litre;
- Cigarettes with filter
Old: KZT 5,000 / 1,000 units;
New: KZT 6,200 / 1,000 units;
- Cigarettes without filter, rolling paper
Old: KZT 5,000 / 1,000 units;
New: KZT 6,200 / 1,000 units.

Article 280.4 of the Tax Code

Obligation of importers on the intended use of monitoring stamps

Obligations imposed on importers on appropriate use of monitoring stamps apply regardless of the country of import (previously such obligation was applied only for imports from EEU countries).

The following additional methods of collateral were introduced (previously only cash could be deposited):

- 1) bank guarantee;
- 2) warrantee;
- 3) pledge of property.

Points 5-1 to 5-4 of Article 653 of the Tax Code

Taxation of subsurface users

Investment financing

Income from write-off of investment financing obligations by a strategic partner (an entity that provided investment financing) of a state-owned company will be regarded as income from contract activity.

Article 310.6-1 of the Tax Code

At the same time, write-off of the state-owned company's (or its subsidiary's) liability on accrued but unpaid interest by the strategic partner before the commercial discovery during the exploration stage should not be regarded as income.

Article 84.2.11 of the Tax Code

Effective from 1 January 2016

Payment of taxes in kind

Cost of extracted minerals (or their monetary value) received from a subsurface user in fulfilment of tax obligations in-kind is not included in annual aggregate income of the recipient nominated by the state.

Article 84.2.12 of the Tax Code

The list of non-deductible expenses was extended by expenses associated with sale of mineral resources transferred by a subsoil user in consideration for execution of tax obligations.

Article 115.15 of the Tax Code

Effective since 1 January 2016

The following transactions associated with transfer of mineral resources by a subsoil user in fulfilment of tax liabilities in-kind are not considered as VAT-able turnover:

- transfer of minerals by a subsurface user to the recipient on behalf of the state;
- sale of minerals by the recipient / authorised recipient on behalf of the state;
- provision of commission services associated with sale of minerals by a recipient / authorised recipient on behalf of the state.

Points 26 to 28 of Article 231.3 of the Tax Code

Effective since 1 January 2016

Deductions of expenses on education of Kazakhstan personnel

The list of deductible expenses on education of Kazakhstan personnel was extended by expenditures actually incurred by a subsurface user for training and retraining of Kazakhstan citizens. Such expenditures include goods, works

and services (as per the list of the authorised body agreed with the competent authority) necessary for improvement of the material and technical base of educational institutions engaged in training of specialists in areas related to subsurface use.

Article 112.3.1 of the Tax Code

Separate tax accounting for subsurface use contracts

Regarding sale of gas to the national operator, acting under the framework of the pre-emptive right of the state, at prices approved by the competent authority: income from sale of such gas should be determined in accordance with Article 86 of the Tax Code (i.e. based on price of sold gas).

Article 310.10 of the Tax Code

Taxable object for rent tax on export

In order to prevent double taxation, the volume of exported mineral resources transferred by a subsurface user in fulfilment of tax obligations in-kind and sold by the recipient on the behalf of the state (or entity authorized by the state) is not taxable for the purpose of rent tax on export.

Article 301 of the Tax Code

Effective since 1 January 2016

Announcement of commercial discovery

Article 318 of the Tax Code (payers of commercial discovery bonuses) was supplemented by the concept of "announcement of commercial discovery", i.e. affirmation of mineral reserves by the authorised state body.

Article 318 of the Tax Code

Taxable basis for commercial discovery bonus

Recalculation of the commercial discovery bonus is now required not only in case of additional exploration, but also in case of a surplus resulting from recalculation of the remaining resources without carrying out actual exploration.

Article 319.2.2 of the Tax Code

Mineral extraction tax rate on subsurface water

A number of mineral extraction tax rates on subsurface water are introduced, varying from 0.001 to 1 MCI¹ per cubic meter of subsurface water. Tax rates depend on taxpayers' categories, production methods and purpose of usage of the subsurface water.

Article 324.2 of the Tax Code

Effective since 1 January 2016

Vehicle tax

Taxable items for vehicle tax purposes

In order to prevent double taxation, certain vehicles are excluded from taxable objects for vehicle tax purposes if such vehicles are subject to property tax.

Article 366.2.4 of the Tax Code

Monitoring of large taxpayers

General terms on monitoring of large taxpayers

The list of large taxpayers subject to monitoring was amended resulting in exclusion of non-profit organisations and state enterprises. The list was extended by subsurface users, which fall under the category of city-forming legal entities.

Article 623.2 of the Tax Code

Effective since 1 January 2016

Tax audit

Tax screening

An additional ground for tax screening was introduced, i.e. if there is a need to confirm the actual presence or absence of a taxpayer, which did not respond to the notification on cameral tax audit, as well as taxpayers recognised as inactive.

Article 588.2.4 of the Tax Code

Duration of tax audits

The duration (formal length) of a tax audit is suspended between the following dates:

- providing the preliminary tax audit act and provision of the taxpayer's objections ;
- receipt of the taxpayer's written objection to the preliminary tax audit act and issuance of the respective decision.

Article 629.4 of the Tax Code

Effective from 1 July 2017

Preliminary tax audit act

Certain categories of taxpayers will have the opportunity to obtain a preliminary tax audit act before the release of the final act. They will also have a right to provide written objections to the preliminary tax audit act. These amendments are aimed at improvement of tax administration, in particular, the mechanism of prejudicial settlement of tax disputes, as well as introduction of the mechanism for negotiation of a preliminary tax audit act with taxpayers. Qualifying taxpayers, procedures and terms are established by the rules of the authorised body.

Article 636-1 of the Tax Code

Effective from 1 July 2017

The procedure for reconsideration of decisions following taxpayers' complaints

As part of changes in settlement of tax and customs disputes in the appeal commission, the chapter determining the procedures for review of the decision on the results of consideration of taxpayers' complaints was excluded.

Chapter 94 of the Tax Code

Effective from 1 July 2017

Procedure for filing complaints by a taxpayer (tax agent)

The procedure for filing complaints by taxpayers (tax agents) to the higher tax authority was changed. According to the amendments, the authorised body considering taxpayers' appeals / complaints will now be the Ministry of Finance (previously, the tax higher authority).

Articles 666 – 675 of the Tax Code

Effective from 1 July 2017

¹ MCI – minimum calculation index in 2017 is KZT 2, 269

Suspension and / or continuation of tax appeal consideration

The Tax Code suspends the period for considering tax appeals in the following cases:

- for conducting thematic and repeated thematic tax audit – up to 15 business days from the date of receipt of the act on completed tax audit by the authorised body;
- on addressing requests to the state authorities, as well as to foreign state authorities – up to 15 business days from the date of receipt of each response.

Article 672.1 of the Tax Code

Effective from 1 July 2017

Period of introduction of e-audit

The introduction of e-audit process (tax and customs) is postponed to 1 January 2019.

Higher threshold for liquidation audit

Maximum threshold of annual aggregate income (including adjustments) for liquidation of business operations without liquidation tax audit was increased. In order to reduce the number of liquidation tax audits and to ensure expansion of the market of audit services, the threshold has been increased from 60,000 to 120,000 MCL.

Article 37-2.1 of the Tax Code

Procedures for application of cash register machines

General provisions on application of cash register machines

The Government will be responsible for listing of activities subject to mandatory application of cash register machines with online data transmission. These amendments are aimed at reduction of use of outdated cash register machines and gradual transfer of taxpayers to cash registers machines with online transmission of data.

Article 645.1 of the Tax Code

The takeaway

The changes are detailed and likely to affect most taxpayers.

We would be pleased to assist you in identifying opportunities and risks connected with changes to the Tax Code.

Tax and Legal Alert

PwC Kazakhstan

Let's talk

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